IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is approved
for reporting or not)
[Chapter VIII Rule 32 (2)(b)]

Description of Case

Writ Petition No. 2292 (S/S) of 2001
(Old No. 27456 of 2000)

Dharamveer Prakash,
Son of Sri Tuooin Lohar,
LRC – II, Collectorate New Tehri,
District – Tehri Garhwal. **…….Petitioner.**

Versus

1. Commissioner, Garhwal Division, Pauri.
2. District Magistrate, Tehri Garhwal.
3. Mahesha Shah, Patwari, Sub Tehsil, Dhanolti, District – Tehri Garhwal.

……Respondents

Approved for reporting. (Yes)

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Not approved for reporting.

Date of Decision August 5, 2005

Initial of Judge

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(Judgement Reserved)

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Hon'ble M.M. Ghildiyal, J.

Heard Sri Shobhit Saharia, learned counsel for the petitioner, learned standing counsel, who has accepted notices on behalf of respondents no. 1 and 2 and Sri H.M. Raturi, learned counsel for the respondent no. 3.

By means of this writ petition, the petitioner has prayed to issue a writ in the nature of certiorari quashing the order dated 09.06.2000 (Annexure No. 4 to the writ petition) passed by respondent no. 1 – Commissioner, Garhwal Division, Pauri allowing the representation of the respondent no. 3 and directing the District Magistrate, Tehri Garhwal, to pass order granting promotion to respondent no. 3 Sri Mahesha Shah on the basis of decision of Selection Committee dated 26.07.1998.

The facts of the case are that petitioner was initially appointed on 01.11.1990 as Patwari against the substantive vacancy and was posted at Tehsil – Pali, District – Tehri Garhwal. The petitioner was promoted to the post of Land Record Clerk – II, against the substantive vacancy by the respondent no. 2 vide his order dated 10.07.1998. The said promotion was purely on temporary basis and did not carry any additional benefits. Respondent no. 2 invited applications from Patwaris working in different tehsils of Tehri Garhwal for filling up proposed vacancies including one existing vacancy in reserved category.

The Selection Committee was constituted as per Rules and the Selection Committee after going through the record placed the petitioner at serial no. 2 against the reserved category and respondent no. 3 was placed at serial no. 1. However, respondent no. 3 was not given promotion to the post Land Record Clerk – II because of two adverse entries recorded for the year 1995 – 96 and 1996-97 against the respondent no. 3.

Though the respondent no. 3 was placed at serial no. 1 by the Selection Committee was not given promotion because of two bad entries in his credit. Petitioner was promoted and in compliance of the promotion order he resumed the charge of Land Record Clerk – II. Against the promotion of petitioner respondent no. 3 preferred representation before the Commissioner, who by order dated 09.06.2000 directed the District Magistrate, Tehri to promote respondent no. 3 on the post of Land Record Clerk – II as per decision of the Selection Committee, which is the order impugned in the present writ petition.

Learned counsel for the petitioner has submitted that Rules clearly laid down that employee can only be considered for promotion if there is no bad entry in his roll for the preceding five years and the same has clearly been explained in the order or respondent no. 2.

In spite of above rule, the Commissioner, Garhwal Division, Pauri has directed the respondent no. 2 to promote the respondent no. 3 as Land Record Clerk – II. He has further pleaded that the impugned order was passed by respondent no. 1 without giving any opportunity of hearing to the petitioner and as such, the order is passed in violation of principle of natural justice is liable to be set aside.

Counter affidavit has been filed by the respondents. I have gone through the order passed by the Commissioner, Garhwal Division, Pauri. Learned Commissioner, Garhwal Division, Pauri while allowing the appeal of respondent no. 3 vide order dated 09.06.2000 learned Commissioner has touched, discussed and appreciated the relevance of so called adverse entries by observing that entry of 1995 – 96 is advisory in nature and not an adverse entry.

Learned Commissioner, Garhwal Division, Pauri has also recorded a finding that the adverse entries recorded against the respondent no. 3 for the year 1996 – 97 was communicated to the respondent no. 3 after one year from the date of decision of the Selection Committee. He has further held that the adverse entry, which has been taken into account by the Selection Committee not to give promotion to respondent no. 3 on the post of Land Record Clerk – II was not communicated to the respondent no. 3 and as such, all these

entries should not have been considered. The Selection Committee on the basis of record and performance of the candidates has awarded marks and on the basis of marks, respondent no. 3 was placed in panel against the reserve category at serial no. 1. After placing the respondent no. 3 at serial no. 1 in the panel the Selection Committee was not justified to recommend not to promote the respondent no. 3 on the basis of adverse entry for the year 1996 – 97 which was yet not communicated to the respondent no. 3.

Learned counsel for the respondents have relied upon the judgement of Hon'ble Supreme Court reported in AIR 1987 SC 948 (Brij Mohan Singh Chopra Vs. State of Punjab) wherein it was held by the Apex Court that there is no doubt that whenever an adverse entry is awarded it must be communicated to the incumbent. The object and purpose underlying the communication is to afford an opportunity to the employee to improve his work and conduct and to make representation to the authority concerned against those entries. If such a representation is made it is imperative that the Authority should consider the representation with a view to determine as to whether the contents of the adverse entries are justified or not. Making of a representation is a valuable right to government employee and if the representation is not considered, it is bound to affect him in his service career as in government service grant of increment, promotion and ultimately premature retirement all depend on the scrutiny of the service records. It is well settled law that in accordance with the rules of natural justice an adverse report in confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated tothe person

concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether adverse report is justified or not.

In the present case the learned Commissioner, Garhwal Division, Pauri has recorded a finding that the adverse entry for the year 1996 – 97 was communicated to the respondent no. 3 after one year from the date of recommendation of Selection Committee not to promote the respondent no. 3. This recommendation was made on the basis of adverse entry for the year 1996 – 97, which was not communicated to respondent no. 3. Though the Selection Committee has placed respondent no. 3 at serial no. 1 in the panel he was not promoted.

I find force in the submission of learned counsel for the respondent no. 3. The second submission made by the learned counsel for the petitioner that while passing the impugned order learned Commissioner, Garhwal Division, Pauri has not offered an opportunity to the petitioner and as such, the order impugned is bad in the eyes of law.

In pursuance of the recommendation of the Selection Committee the petitioner was promoted to the post of Land Record Clerk – II and had joined on the promotional post and as such, it was proper for the learned Commissioner, Garhwal Division, Pauri to give him opportunity of hearing prior to passing of impugned order.

I found force in the submission of Learned counsel for the petitioner on the issue of proper opportunity of hearing.

For the reasons recorded above, the writ petition is partly allowed, order dated 09.06.2000 passed by the Commissioner Pauri Garhwal is quashed. Learned Commissioner, Garhwal Division, Pauri is directed to pass fresh order after giving opportunity of hearing to the petitioner within a period of two months from today. Till the decision is taken by the learned Commissioner, Garhwal Division, Pauri afresh after giving opportunity of hearing to the petitioner, status quo shall be maintained.

With this direction the writ petition is finally disposed of. No order as to costs.

(M.M. Ghildiyal, J.)

August 5, 2005
S.K.Sharma